

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUHARREM BALKANLI,

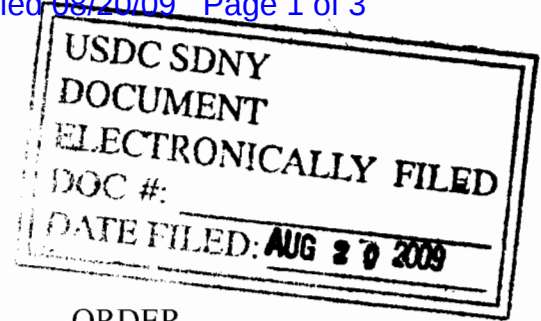
Petitioner,

-v-

U.S. HOMELAND SECURITY, BUREAU
OF IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondent.

GEORGE B. DANIELS, United States District Judge:



ORDER
09 Civ. 749 (GBD)(MHD)

Pro se Petitioner Muharrem Balkanli commenced this habeas corpus proceeding alleging that his detention by the Department of Homeland Security was unlawful, and seeking release from custody and dismissal of any further immigration proceedings. The Court referred the matter to Magistrate Judge Michael H. Dolinger for a Report and Recommendation. Petitioner was subsequently released on bail after a bond hearing before an immigration judge. Magistrate Judge Dolinger issued a Report and Recommendation ("Report") recommending that the writ be denied and the petition be dismissed. The Court adopts the Report's recommendation.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a de novo determination of those portions of the Report to which objections are made. Id.; Heckler v. Montgomery, 567 F. Supp. 2d 471, 472 (S.D.N.Y. 2008). The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). It is not required, however, that the Court conduct a de novo hearing on the matter. See, United States v. Raddatz, 447 U.S. 667, 676 (1980). The Court may instead, "arrive at its own, independent conclusions" regarding those portions to which objections were made. Nelson v. Smith, 618 F.

Supp. 1186, 1189-90 (S.D.N.Y. 1985) (quoting Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir. 1983)). When no objections to a Report are made, the Court may adopt the Report if there is no clear error on the face of the record. Adee Motor Cars, LLC v. Amato, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005) (citations omitted).

Magistrate Judge Dolinger found that petitioner's writ seeking release from custody became moot upon petitioner's release. The magistrate judge also concluded that the petitioner's simultaneous filing of a request for a directive dismissal of any further immigration proceedings is unfounded in that petitioner has failed to plead any basis for the dismissal of the removal proceeding pending against him. Moreover, Magistrate Judge Dolinger determined that the petitioner failed to exhaust all other administrative remedies. See 8 U.S.C. § 1252 (d)(1); see, e.g., Ivanishvili v. U.S. Dep't of Justice, 433 F.3d 332, 343 (2d Cir. 2006). Furthermore, the Report properly indicates that review of orders of removal are solely a matter for the circuit court, and that review by the circuit court may only proceed after an order of removal has been issued and all other remedies have been exhausted. 8 U.S.C. § 1252 (a)(5); see, e.g., Samuels v. Chertoff, 550 F.3d 252, 256 (2d Cir. 2008).


In his report, Magistrate Judge Dolinger advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Neither party filed objections to the Report and the time to do so has expired. After carefully reviewing the Report, the Court finds that the Report is not facially erroneous. Accordingly, the Court adopts the Report and for the reasons stated therein, the writ is hereby denied and the petition dismissed.

Petitioner has not made a substantial showing of the denial of a constitutional right.

Therefore, a certificate of appealability will not issue. 28 U.S.C. § 2253; Tankleff v. Senkowski, 135 F.3d 235, 241 (2d Cir. 1998); United States v. Perez, 129 F.3d 255, 259-260 (2d Cir.1997); Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997). Additionally, the Court certifies pursuant to 28 U.S.C. 1915(a)(3) that any appeal from this order would not be taken in good faith. Coppedge v. United States, 369 U.S. 438 (1962).

Dated: New York, New York
August 20, 2009

SO ORDERED:



GEORGE B. DANIELS
United States District Judge